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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/666,813	09/21/2000	Kevin R. Crompton	M0459/7018 DW	9117

7590

09/22/2004

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EXAMINER
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JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/666,813	CROMPTON, KEVIN R.	
	Examiner	Art Unit	
	Cheryl Juska	1771	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-48 and 53-57 is/are pending in the application.
- 4a) Of the above claim(s) 28-46 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 47 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-17, 19-26, 48, 53-57 is/are rejected.
- 7) ☒ Claim(s) 5, 18 and 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>09/03, 06/04</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. Applicant's response filed June 23, 2004, has been entered. The arguments presented therein have been found persuasive. Specifically, applicant traverses the rejection of the claims based upon Gabay in view of Stark by arguing that one would not be motivated to modify Gabay with Stark's teaching of printing out of registry since the Gabay invention requires simultaneous superimposed printing and embossing. As such, the rejections set forth in the last Office Action are hereby withdrawn.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 6-17, and 19-25 are rejected under 35 USC 103(a) as being unpatentable over US 3,669,818 issued to Stark in view of US 3,916,823 issued to Halloran.

Stark teaches patterned or textured pile fabrics having areas of low and high pile and a design pattern printed out of register with the patterned pile (col. 1, lines 51-57 and col. 2, lines 7-17). Said pile fabric may be a flocked fabric (col. 2, lines 10-14). The Stark invention produces an aesthetically pleasing product having "an enriched appearance that enhances the

surface of the products formed therefrom” (col. 1, lines 50-57 and col. 2, lines 45-51). Note Figure 1 shows an illustration of a flower printed on the textured pile fabric.

Stark fails to teach the flocked fabric is patterned or textured by embossing. However, air embossing is a well known method of patterning or texturing flock fabrics. For example, Halloran teaches a process of pattern embossing flock fabrics (abstract). From the disclosure and the Figures, one can see that the Halloran invention produces “visually discernable regions,” “3-D texture,” and “depressions.” Thus, it would have been obvious to one skilled in the art to employ an embossing method to create the pile texture or pattern of the Stark invention, since embossing is a well-known method that produces varied pattern effects at a relatively low cost.

With respect to the claim recitations of “elongate shapes,” “longitudinal axes of the shapes being oriented substantially along a first direction,” “randomly positioned,” “non-uniform in length,” and “simulates bark,” it is argued that said recitations are not given patentable weight since they appear to be merely descriptive of the design without function. *In re Seid*, 73 USPQ 431 found that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. *In re Dailey*, 149 USPQ 47 found that a particular configuration was a matter of design choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed configuration was significant. It is believed that Stark teaches the relationship of the enhanced visual effect due to the superimposed textured pile and printed pattern out of registry. This relationship would be evident regardless of the particular pattern or design chosen. Therefore, claims 1, 9, 10, and 21-23 are rejected as being obvious over the cited prior art.

Claims 2-4, 6-8, 13-17, 19, and 20 are also rejected since Stark exemplifies a sylvan illustration of a flower and teaches an enriched appearance from the invention.

With respect to claims 11 and 24 it is argued that the method of printing is not given patentable weight since method limitations in product claims must manipulatively effect the structure of the product made to be given weight. It is argued that the method of printing by heat transfer would produce a structurally similar product to the printed product of Stark (e.g., roller printed, screen printed, photographic printed, or the like). Thus, claims 11 and 24 are also rejected.

With respect to claims 12 and 25, it is argued that printing on textured pile will inherently produce variations in color and shading due to the variations in angles of incident light on said textured pile. Thus, claims 12 and 25 are also rejected.

4. Claims 26, 48, and 53-57 are rejected under 35 USC 103(a) as being unpatentable over the cited Stark and Halloran patents.

Claim 26 recites a camouflage fabric comprising air-textured pile having depressions of non-uniform length and width and a printed illustration thereon of a sylvan setting, wherein the texturing comprises a random overlay on the illustration. Claims 48 and 53-57 contain similar structural features.

Stark clearly teaches the random overlay of patterns, sylvan print, and enhanced visual effect, while Halloran clearly teaches air-embossed depressions of non-uniform length and width (Figure 2). Stark and Halloran fail to teach the combination of features to form a camouflage fabric. However, it is argued that the structural limitations of the claim, as well as the design features, are met by the cited prior art. As such, it is argued that the preamble limitation of a

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camouflage fabric is merely descriptive of the intended use. Thus, claims 26, 48, and 53-57 are rejected as obvious over the cited prior art.

***Allowable Subject Matter***

5. Claims 5 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 47 is allowed.

The recitation to the ornamental design in claims 1-4 (i.e., elongate shapes with longitudinal axes of the shapes being oriented substantially along a first direction and the sylvan illustration or scene) is given patentable weight with respect to claims 5 and 18. Specifically, said design is related to the function of a camouflage fabric (i.e., to break up the outline or surface of a person or object to avoid detection). Thus, claims 5, 18, and 47 contain allowable subject matter.

6. Claim 27 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Parent claim 26 was rejected over Stark and Halloran despite the preamble limitation to a camouflage fabric since the prior art taught the structural and design features of the claim. However, claim 27, which limits the texturing depressions of non-uniform length and width to simulated bark, is not taught or suggested by said prior art.

*Conclusion*

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CHERYL A. JUSKA  
PRIMARY EXAMINER